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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,846	08/07/2000	Dave Frederickson	12368/79201	3409

7590

07/14/2003

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EXAMINER

SIMONE, CATHERINE A

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 07/14/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/633,846

Applicant(s)

FREDERICKSON ET AL.

Examiner

Catherine Simone

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 9, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 20-22 and 26-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 and 26-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16 and 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. The request for a continued prosecution application (CPA) under 37 CFR 1.53(d) filed on [1] is acknowledged. 37 CFR 1.53(d)(1) was amended to provide that the prior application of a CPA must be: (1) a utility or plant application that was filed under 35 U.S.C. 111(a) before May 29, 2000, (2) a design application, or (3) the national stage of an international application that was filed under 35 U.S.C. 363 before May 29, 2000. *See Changes to Application Examination and Provisional Application Practice*, interim rule, 65 *Fed. Reg.* 14865, 14872 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47, 52 (Apr. 11, 2000). Since a CPA of this application is not permitted under 37 CFR 1.53(d)(1), the improper request for a CPA is being treated as a request for continued examination of this application under 37 CFR 1.114. *See id.* at 14866, 1233 *Off. Gaz. Pat. Office* at 48.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 16 and 20-22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lupinski et al. (4,100,883).

Regarding **claim 16**, Lupinski et al. discloses a corrosion-resistant coated and cured strap comprising an elongated metal strap base element (Fig. 4, #74), the metal strap base element

having a width defining first and second sides and a thickness defining a pair of opposing edge regions (Fig. 4, #76A and #76B); and a melted and cured powder coating (Fig. 4, #78) on the base element (Fig. 4, #74), the coating having a first substantially consistent thickness at the first and second sides (Fig. 4, #78) and a second substantially consistent thickness at the edge regions (Fig. 4, #80B and #80A), the first and second thicknesses being different from one another, wherein the coating has a greater thickness at about the pair of opposing edge regions (Fig. 4, #80A and #80B) and about regions of the first and second sides adjacent the pair of opposing edge regions than on the first and second sides (Fig. 4, #78). However, Lupinski et al. fails to disclose the coating thickness defining a dog-bone profile.

Normally, it is to be expected that a change in shape of the coating thickness would be an unpatentable modification. Under some circumstances, however, changes such as shape may impart patentability to a product if the particular shape claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. *In re Dailey et al.*, 149 USPQ 47 CCPA 1966.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to change the shape of the coating thickness in Lupinski et al. to define a dog-bone profile. One skilled in the art would have been motivated to do so in order to form a coated metal strap, since it has been held that a change in form or shape of the coating thickness would be an unpatentable modification absence of showing unexpected results.

Regarding **claim 20**, the first thickness of the coating is about 0.2 thousandths of an inch to about 5.0 thousandths of an inch (see col. 9, lines 1-3 and lines 21-23). Regarding **claim 21**, the first thickness of the coating is about 0.6 thousandths of an inch to about 1.2 thousandths of

an inch (see col. 9, lines 40-43). Regarding **claim 22**, the first thickness of the coating is about 0.8 thousandths of an inch (see col. 9, lines 41-43).

Response to Arguments

4. Applicant's arguments with respect to claims 16 and 20-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703) 605-4297. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Catherine Simone
Examiner
Art Unit 1772

July 11, 2003



**WILLIAM P. WATKINS III
PRIMARY EXAMINER**